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OFFICE OF PETITIONS

In re Patent No. 6,767,739	: DECISION ON REQUEST FOR
Crooke et al.	: RECONSIDERATION OF
Issue Date: July 27, 2004	: PATENT TERM ADJUSTMENT
Application No. 09/917,963	: and
Filed: July 30, 2001	: NOTICE OF INTENT TO ISSUE
Atty Docket No. ISPH-0591	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed July 22, 2004.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of eighty-one (81) days.

On July 27, 2004, the above-identified application matured into U.S. Patent No. 6,767,739, with a patent term adjustment of 46 days printed on the front page. In response, patentees filed the instant request for reconsideration. Patentees do not dispute that the initial determination of patent term adjustment at the time of the mailing of the notice of allowance was zero (0) days. However, after the mailing of the notice of allowance, a period of adjustment of 110 days was entered in the application. Patentees dispute the Office reduction of the 110 days by 35 days for applicant delay in filing a response to the Notice to File Missing Parts of Application mailed October 31, 2001.

A review of the application file reveals that the applicants' response to the Notice to File Missing Parts of Application mailed October 31, 2001, is of record in the application with a date of receipt by the Office of January 24, 2002, reflecting timely filing¹ for purposes of compliance with 37 CFR 1.704(b). Furthermore, the response was complete and proper. Thus, the Office should not have entered the date that the instant application was complete as March 7, 2002 or assessed patentees a

¹ Patentees' postcard receipt further provides *prima facie* evidence that the response was timely filed within the meaning of § 1.704(b). See MPEP 503. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in § 1.704(b). See 37 CFR 1.704(b).

delay of thirty-five (35) days. The response was timely filed within the three-month period under 37 CFR 1.704(b) and accordingly, patentees' delay should have been assessed as zero "0" days. Patentees did not fail to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to the Notice to File Missing Parts of Application.

In view thereof, it is concluded that the patent should have issued with a revised Patent Term Adjustment of eighty-one (81) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by EIGHTY-ONE (81) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A. Ferriter
for

Karin Ferriter
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Office of Deputy Commissioner
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